

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Roseville  
Telephone Company (U 1015 C) to Review its  
New Regulatory Framework.

Application 99-03-025  
(Filed March 5, 1999)

**OPINION GRANTING INTERVENOR COMPENSATION TO  
THE UTILITY REFORM NETWORK FOR SUBSTANTIAL  
CONTRIBUTION TO DECISION 04-11-032**

This decision awards The Utility Reform Network (TURN) \$22,578.48 for its substantial contribution to Decision (D.) 04-11-032.

**I. Background**

On May 3, 2002, SureWest Telephone<sup>1</sup> (SureWest) petitioned to modify D.01-06-077, its first new regulatory framework (NRF) triennial review decision, seeking to eliminate the "sharing mechanism" that requires it to allocate to ratepayers fifty percent of its annual earnings in excess of a "benchmark" rate of return (ROR), which is set higher than the Commission-adopted "authorized" ROR (known as the "50/50 Sharing Band"). The Commission's Division of Ratepayer Advocates<sup>2</sup> (DRA) opposed modification of the sharing mechanism. In August 2003, the assigned administrative law judge (ALJ) issued a draft decision denying the Petition. In October 2003, Commissioner Kennedy issued

---

<sup>1</sup> SureWest Telephone formerly operated as Roseville Telephone Company.

<sup>2</sup> Formerly designated as the Office of Ratepayer Advocates.

an alternate draft decision, modifying the sharing mechanism as requested. In November 2003, the assigned ALJ granted TURN leave to intervene to file comments opposing the alternate draft decision. At its February 26, 2004 meeting, the Commission withdrew both draft decisions from the agenda so that an evidentiary hearing could be convened and a proposed decision promptly drafted. The Assigned Commissioner issued a ruling in March 2004 setting the matter for hearing.

SureWest served opening testimony on May 3, 2004. During the week of May 10, 2004, DRA conducted a limited on-site audit of SureWest's books and accounting records for the years 2000-2003. SureWest and DRA subsequently reached agreement on certain accounting and ratemaking adjustments to SureWest's records that were summarized in a letter from SureWest to DRA, dated June 11, 2004. Attaching the SureWest letter, DRA submitted testimony addressing the remaining disputed audit issues and the future status of the company's sharing mechanism on June 18, 2004.

SureWest, DRA, and TURN, the active parties in this phase of the proceeding, began settlement discussions on June 29, 2004. On July 16, 2004, SureWest notified all parties of record, pursuant to Rule 51.1(b) of the Commission's Rules of Practice and Procedure (Rules), of a July 23, 2004 telephonic settlement conference to discuss the terms of the agreement. The settlement conference included SureWest, DRA and TURN. A representative of Citizens Telecommunications Company of California, Inc. also participated but neither signed nor opposed the Revised Settlement Agreement. On August 4, 2004, the assigned ALJ convened a prehearing conference in order to question the Settling Parties about various aspects of the agreement.

As a result of their negotiations, the parties settled all outstanding issues raised in the testimony in this proceeding. Included in the revised settlement are guaranteed payment refunds of \$9,000,000 over four years, partly agreed upon in exchange for a suspension of the sharing mechanism until the end of 2010. This proceeding is closed.

## **II. Requirements for Awards of Compensation**

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC), or in special circumstances at other appropriate times that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)

4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs are reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

### **III. Procedural Issues**

The prehearing conference in this matter was held on March 16, 2004. TURN timely filed its NOI on April 15, 2004. No ruling issued addressing the NOI.

Section 1802(b)(1) defines a “customer as: (A) a participant representing consumers, customers or subscribers of a utility; (B) a representative who has been authorized by a customer; or (C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. In this case, we find TURN is a customer as defined in § 1802(b)(1)(C), as it is an organization authorized by its articles of incorporation<sup>3</sup> to represent the interests of consumers, a portion of which are residential customers.

---

<sup>3</sup> D.98-04-059 directed intervenors either to file their articles of incorporation with the NOI, or to provide a reference to a previous filing. (*Id.* at 30.) TURN chose the latter

*Footnote continued on next page*

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted. Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. In its NOI, TURN stated that it planned to take an active part in the case and followed through in terms of its full involvement in the settlement negotiations and agreement. It estimated that its work would take approximately 120 hours of attorney and expert witness time and other costs.

TURN asserted financial hardship in its NOI. The subject phase of this proceeding, devoted to the sharing mechanism, commenced on February 26, 2004. We find that TURN meets the requirement for financial hardship through a rebuttable presumption of eligibility, pursuant to section 1804(b)(1), because TURN met this requirement in another proceeding within one year of the commencement of the subject phase of this proceeding (ALJ Ruling dated March 25, 2003, in Application 02-07-050). No party rebuts this presumption.

TURN filed its request for compensation on April 15, 2004, within 60 days of D.04-11-032 being issued.<sup>4</sup> In view of the above, we find that TURN has satisfied all the procedural requirements necessary to make its request for compensation.

---

alternative, referring to articles of incorporation it filed with its NOI in Application (A.) 98-02-017 and again in A.99-12-024. TURN has approximately 30,000 dues-paying members, the majority of which it believes to be residential ratepayers. TURN does not poll its members to determine whether they are residents or small businesses, so no percentage split is available as required by D.98-04-059, Finding of Fact 12.

<sup>4</sup> No party opposes the request.

**IV. Substantial Contribution**

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1802(i) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.<sup>5</sup>

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could

---

<sup>5</sup> D.98-04-059, 79 CPUC2d, 628 at 653.

find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions TURN made to the proceeding.

TURN notes that although difficult to differentiate the specific contributions made by each of the parties, it worked closely with DRA on developing the strategy and stances taken during the settlement negotiations. TURN maintained that it was involved in all major aspects of the negotiations including discussions on specific provisions, and contributing to and reviewing draft settlement language. As noted above, the settlement guaranteed ratepayer refunds of \$9,000,000 over four years, part of which was in exchange for a suspension of the sharing mechanism until the end of 2010.

TURN demonstrates that its involvement in this proceeding resulted in important consumer protections being identified and clarified. TURN's positions in this case were reflected in the settlement and thus in the final decision. Overall, we find TURN made a substantial contribution as described above.

After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation requested is reasonable.

## **V. Reasonableness of Requested Compensation**

TURN requests \$22,578.48 for the participation of two of its attorneys in this proceeding, as follows:

Robert Finkelstein (7.25 hours x \$365 (2003))	\$ 2,646.25	
Robert Finkelstein (1 hour x \$395 (2004))	\$ 395.00	
Total		\$ 3,041.25

William Nusbaum (6.50 hours x \$340 (2003))	\$ 2,210.00
William Nusbaum (44 hours x \$365 (2004))	\$16,060.00
Compensation Request (6.75 hours x \$182.50)	\$ 1,231.88
William Nusbaum Total	\$19,401.88
Attorney Subtotal	\$22,443.13
Legal Research (Lexis)	\$ 13.75
Photocopying Expenses	\$ 21.60
Subtotal	\$ 35.35
<b>Total</b>	<b>\$22,578.48</b>

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below:

#### **A. Hours and Costs Related to and Necessary for Substantial Contribution**

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

TURN documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours.<sup>6</sup> Since we found that TURN's efforts made a substantial contribution to the delineated

---

<sup>6</sup> TURN separated the hours associated with preparation of this compensation request and requests compensation at half the usual hourly rate for this time.



decision that adopted a settlement agreement, we need not exclude from TURN's award compensation for certain issues

### **B. Market Rate Standard**

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

For 2003, TURN requests an hourly rate of \$365 and \$340 for Finkelstein and Nusbaum, respectively. We previously approved these same rates in D.03-08-041<sup>7</sup> and D.04-12-054,<sup>8</sup> respectively, and adopt them here.

For 2004, TURN requests an hourly rate of \$395 for Finkelstein, and \$365 for Nusbaum. We previously approved these same rates in D.05-04-014, and adopt them here.

### **C. Productivity**

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

In collaboration with DRA, TURN fully participated in the settlement negotiations with SureWest, and contributed to the draft settlement language that was ultimately submitted to and approved by the Commission. The settlement guaranteed refunds of \$9 million over four years, which in terms of

---

<sup>7</sup> Page (p.) 7 (Rulemaking (R.) 92-03-050)

<sup>8</sup> P. 31 (R.00-02-004)

ratepayer value, greatly exceeds the compensation request. Thus, we find that TURN's efforts have been productive.

#### **D. Direct Expenses**

The itemized direct expenses submitted by TURN include costs for legal research<sup>9</sup> and photocopying and total \$35.35. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

#### **E. Award**

As set forth in the table below, we award TURN \$22,578.48.

<b>Advocate</b>	<b>Year</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
Robert Finkelstein	2003	7.25	\$365.00	\$2,646.25
Robert Finkelstein	2004	1	\$395.00	\$ 395.00
William Nusbaum	2003	6.50	\$340.00	\$2,210.00
William Nusbaum	2004	44	\$365.00	\$16,060.00
William Nusbaum	2004	6.75	\$182.50	\$1,231.88
Legal Research (Lexis)	\$13.75			
Photocopying expenses	\$21.60			
<b>TOTAL</b>				<b>\$22,578.48</b>

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on April 5, 2005, the 75th day after TURN filed its compensation

---

<sup>9</sup> Specifically, *Lexis*

request, and continuing until full payment of the award is made. The award is to be paid by SureWest as the regulated entity in this proceeding.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. TURN's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

#### **VI. Waiver of Comment Period**

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

#### **VII. Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner and Jacqueline A. Reed is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. TURN has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. TURN made a substantial contribution to D.04-11-032 as described herein.
3. TURN requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.
4. TURN requested related expenses that are reasonable and commensurate with the work performed.
5. The total of the reasonable compensation is \$ 22,578.48.

6. The appendix to this opinion summarizes today's award.

### **Conclusions of Law**

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation incurred in making substantial contributions to D.04-11-032.

2. TURN should be awarded \$22,578.48 for its contribution to D.04-11-032.

3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

4. This order should be effective today so that TURN may be compensated without further delay.

5. This proceeding should be closed.

### **O R D E R**

**IT IS ORDERED** that:

1. The Utility Reform Network (TURN) is awarded \$22,578 .48 as compensation for its substantial contributions to Decision 04-11-032.

2. Within 30 days of the effective date of this decision, SureWest Telephone shall pay TURN the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning April 5, 2005, the 75<sup>th</sup> day after the filing date of TURN's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.
4. Application 99-03-025 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX****Compensation Decision Summary Information**

<b>Compensation Decision:</b>	D_____	<b>Modifies Decision?</b>
<b>Contribution Decision(s):</b>	D.04-11-032	
<b>Proceeding(s):</b>	A. 99-03-025	
<b>Author:</b>	ALJ Reed	
<b>Payer(s):</b>	SureWest Telephone Company	

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
The Utility Reform Network	1/20/2005	\$22,578.48	\$22,578.48	No	N/A

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Robert	Finkelstein	Attorney	The Utility Reform Network	\$365 \$395	2003 2004	\$365 \$395
William	Nusbaum	Attorney	The Utility Reform Network	\$340 \$365	2003 2004	\$340 \$365

**(END OF APPENDIX)**